

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DERRICK STARKS,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 05-3352
	:	
CITY OF PHILADELPHIA,	:	
MAYOR JOHN F. STREET,	:	
DISTRICT ATTORNEY LYNNE	:	
ABRAHAM,	:	
GUY SCIOLLA,	:	
JACK MEYERS,	:	
and JOSEPH SANTAGUIDA,	:	
Defendant	:	

MEMORANDUM

STENGEL, J.

October 28, 2005

Plaintiff, Derrick Starks, brought this action claiming the defendants, City of Philadelphia, Mayor Street, District Attorney Lynne Abraham, assistant District Attorney Guy Sciolla, Jack Myer esq., and Joseph Santaguida esq., violated his civil and constitutional rights pursuant to 42 U.S.C. §§ 1981, 1983, 1985, and 1986.

I. BACKGROUND

On June 27, 1980, Starks was convicted of Felony Murder, Possessing an instrument of crime, and Criminal Conspiracy. He was sentenced to life imprisonment for the murder and a consecutive ten-to-twenty years prison term for the other charges. On June 30, 2005, Starks commenced this action alleging his 1980 conviction was the result of fraud and more specifically that assistant District Attorney Guy Sciolla colluded with defense attorneys Jack Myers and Joseph Santaguida to conceal and withhold

information that Starks contends was exculpatory.¹ Starks is currently seeking in excess of 15 million dollars in damages. The defendants City of Philadelphia along with Mayor Street, Joseph Santaguida, and District Attorney Lynne Abraham appearing with former assistant district attorney Guy Sciolla have filed motions to dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6).

II. STANDARD of REVIEW

When considering a motion to dismiss under Fed. R. Civ. Proc. 12(b)(6), the court must accept the complaint's allegations as true and draw all reasonable inferences in plaintiff's favor. Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1164-65 (3d Cir. 1987).

Under Rule 12(b)(6), a Defendant may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." The rule is designed to screen out cases where "a complaint states a claim based upon a wrong for which there is clearly no remedy, or a claim which the Plaintiff is without right or power to assert and for which no relief could possibly be granted." Port Auth. v. Arcadian Corp., 189 F.3d 305, 311-12 (3d Cir. 1999). Under Rule 12(b)(6), a complaint should not be dismissed for failure to state a claim "unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The issue, therefore, is not whether the Plaintiff will ultimately prevail, but whether he is entitled to offer evidence to support his claims. Scheuer v. Rhodes, 416

¹The statements relate to one of Starks' brother's confession to taking part in the robbery.

U.S. 232, 236 (1974); See also Maio v. Aetna, Inc., 221 F.3d 472, 482 (3d Cir. 2000).

Further, a court's review of a pro se complaint "is less stringent than that of pleadings prepared by lawyers." Milhouse v. Carlson, 662 F.2d 371, 373 (3d Cir. 1981). "A pro se complaint may be dismissed for failure to state a claim only if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Id. (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972).)

III. DISCUSSION

In this case, the defendants argue that Starks' claims should be dismissed as time-barred and in the alternative should be dismissed pursuant to the Rooker-Feldman doctrine,² Heck v. Humphrey, 512 U.S. 477 (1994),³ or Monell v. Dept. of Soc. Servs., 436 U.S. 658 (1978).⁴ Because the facts giving rise to this suit occurred in 1980, I will address the statute of limitations argument first.

A. Are Starks Claims Time-Barred?

Generally, because 42 U.S.C. §§ 1981, 1983, or 1985 do not contain their own statute of limitations, federal courts apply the residual state statute of limitations for personal injury causes of actions. Lake v. Arnold, 232 F.3d 360, 368 (3d Cir. 2000); and Gaspar v. Merck and Company, Inc., 118 F. Supp. 2d 552, 556-57 (E.D. Pa. 2000). In

²A Federal district court may not exercise appellate review over state court determinations.

³A Plaintiff may not challenge the underlying validity of a criminal conviction through a civil rights lawsuit.

⁴Only actions taken by municipal employees with policy-making authority may subject a municipality to section 1983 liability.

Pennsylvania the applicable statutes of limitations for sections 1981, 1983, and 1985 claims are two years.⁵ Id. 42 U.S.C. § 1986, however, provides for its own one year statute of limitations.

In this case, considering the accrual of the statute of limitations for Starks' complaint occurred over twenty-five years ago,⁶ the only reason why Starks' claims would not be barred is if the statute of limitations were tolled. Starks cites Oshiver v. Levin, Sedren, & Berman, 38 F.3d 1380 (3d Cir. 1994); Lake v. Arnold, 232 F.3d 360 (3d Cir. 2000); and Robinson v. Dalton, 107 F.3d 1018 (3d Cir. 1997) as applicable examples of when the Third Circuit considered tolling the statute of limitations. None of the three cases is helpful to Starks. In Oshiver the statute of limitations on a female attorney's claim of employment discrimination was tolled because the attorney could not of known about the firm's discriminatory practices until after they hired a similarly qualified male. In Lake, a female's claims against the state for wrongful sterilization (battery) were tolled because the female did not realize she had been permanently sterilized. And in Dalton,

⁵Starks concedes that Pennsylvania's two year statute of limitations are applicable in this case.

⁶Accrual of the statute of limitations begins when the plaintiff either knows or should have known about the injury which gives rise to the federal cause of action. See Clark v. Sears, Roebuck & Co., 27 F. Supp. 1216, 1222 (E.D. Pa. 1993) ("The limitations period for employment discrimination cases commences under both Section 1981 and Title VII when the plaintiff knows or reasonably should know that the discriminatory act has occurred. Stafford v. Muscogee County Board of Education, 688 F.2d 1383, 1390 (11th Cir. 1982); Cuffy v. Getty Refining & Marketing Co., 648 F. Supp. 802, 808 (D.Del. 1986)."); Montgomery v. DeSimone, 159 F.3d 120, 126 (3d Cir. 1998) "Under federal law, which governs the accrual of section 1983 claims, 'the limitations period begins to run from the time when the plaintiff knows or has reason to know of the injury which is the basis for the section 1983 action.'" (quoting Genty v. Resolution Trust Corp., 937 F.2d 899, 919 (3d Cir. 1991)). In this case Starks knew or should have known of the events giving rise to his claim at the time of his brother's trial, or perhaps even sooner when his own attorney found out about the possibly exculpatory statements.

“the Third Circuit held that there were no grounds for equitable tolling where an employee of the Philadelphia Naval Shipyard said that he talked to an EEO counselor over the telephone, and that counselor told him he did not have to file a separate complaint because of his pending claims of retaliation. Dalton at 1023.” Dougherty v. Henderson, 155 F. Supp. 2d 269 (E.D. Pa. 2001).

In this case, Starks claims he was unable to learn about the extent of the collusion between the defense attorneys and the assistant district attorney until after his friend retrieved documents and transcripts from the Philadelphia Criminal Justice Center's archives. Starks does not claim the documents were kept under seal, nor that his friend could not have retrieved them earlier.⁷ Starks' main contention for equitable tolling is that as a poor, uneducated, African American, he is a member of a judicially protected class. His argument revolves around broadly interpreting Anderson v. Haverford College, 868 F. Supp. 741, 745 (E.D. Pa. 1994) (Title VII race discrimination case in which the plaintiffs survived defendant's motion for summary judgment by showing a similarly situated white employee was treated differently). This is a misapplication of Anderson, and there is no support for treating Starks differently for equitable tolling purposes solely because of his social/ economic status. "Although the Supreme Court has repeatedly recognized the equitable tolling doctrine, it also has cautioned that 'procedural requirements established by Congress for gaining access to the federal courts are not to be

⁷The transcripts are of his brother's 1980 trial arising out of the same facts as Starks' conviction. The testimony is, and has always been, a part of the public record.

disregarded by courts out of a vague sympathy for particular litigants.'" Seitzinger v. Reading Hosp. & Med. Ctr., 165 F.3d 236, 240 (3d Cir. 1999). The Third Circuit elaborated "that there are three principal, though not exclusive, situations in which equitable tolling may be appropriate: (1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum." Oshiver, 38 F.3d at 1387. Furthermore, Starks has the burden of establishing the facts necessary to justify equitable tolling. Byers v. Follmer Trucking Co., 763 F.2d 599, 600-601 (3d Cir. 1985). None of the three requirements listed in Oshiver relates to Starks' claims. Starks has not been misled about a possible cause of action, he has asserted his rights in relation to his 1980 conviction on numerous occasions before this current complaint,⁸ and he has not mistakenly filed in the wrong forum.

B. ARE THERE OTHER REASONS TO DISMISS STARKS' CLAIMS?

Within the District Attorney's thorough motion, many other grounds are argued why Starks' claims should be dismissed. The reasons vary from this Court lacking subject matter jurisdiction due to the Rooker-Feldman doctrine, to pointing out that Starks

⁸See Commonwealth v. Derrick Starks, 450 A.2d 1363 (Pa. Super. Ct. 1983); Commonwealth v. Derrick Starks, No. 619 E.D. Alloc. Dkt. 1982 (Dec. 29, 1982); Commonwealth v. Derrick Starks, No. 1666 Philadelphia 1991 (Memorandum Opinion, Pa Super. Ct. Jan. 9, 1992); Commonwealth v. Derrick Starks, No. 94 E.D. Alloc. Dkt. 1992 (Jan. 17, 1992); Commonwealth v. Derrick Starks, 558 Pa. 608, 736 A.2d 604 (No. 0423 E.D. Alloc. Dkt. 1992(Pa. Feb. 3, 1999)); Starks v. Jeffes, No. 86-2168 (E.D. Pa. Sept. 30, 1986); Starks v. Love, No. 93-3140 (E.D. Pa. June 8, 1994); and Starks v. Vaughn, No. 03-3801 (E.D. Pa. Sept. 3, 2003).

has already filed three *habeas corpus* petitions (all three were denied). All of these arguments have merit. However, because I find that Starks claims are time-barred I will not analyze each argument individually.

IV. CONCLUSION

Based upon the analysis above I find that all of Starks claims are time-barred. An appropriate order follows.

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and JOSEPH SANTAGUIDA,	:	
Defendant	:	

ORDER

AND NOW, this day of October, 2005, upon consideration of the defendants' Motions to Dismiss the plaintiff's Complaint (Docket #'s 4, 7, and 10), it is hereby ORDERED that the Motions are GRANTED. This case is DISMISSED with prejudice and the Clerk of the Court shall mark this case as closed for all purposes.

BY THE COURT:

LAWRENCE F. STENGEL, J.